Chow Jieen (a minor claiming through her father as litigation representative, Chow Chee Kong) & Ors v Chairman of United Chinese School Committees' Association of Malaysia (sued on behalf of United Chinese School Committees' Association of Malaysia pursuant to s 9(c) of the Societies Act 1966) & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(NCVC)(A)-959–05 OF 2018
IDRUS HARUN, SURAYA OTHMAN AND STEPHEN CHUNG JJCA
29 JULY 2019

Statutory Interpretation — Statutory Interpretation — Literal versus holistic approach — Whether particular provision in statute could not be read literally and in isolation from rest of statute — Whether courts should construe purpose of the statute in context and scheme of Act as a whole — Whether in construing statute court must not only look at language of statute but consider social conditions which gave rise to it and mischief it was intended to rectify — Whether factual matrix showed government had officially recognised eligibility of 60 Chinese private secondary schools ('CPSS') in country to annually hold UEC examination for its students formulated by United Chinese School Committees' Association of Malaysia ('Dong Zong') — Whether Education Ministry when approving establishment of branch of one of 60 CPSS was aware branch would similarly teach both national and Dong Zong curricula and hold UEC examinations for its students — Whether correspondence between relevant parties showed Ministry had tacitly allowed branch school to conduct UEC examination — Whether there was no necessity for school to make separate application to hold the examination

In 2010, the Chong Hwa Kuala Lumpur Chinese private secondary school ('Chong Hwa KL') applied to the Education Minister for permission to establish its branch (the second respondent or 'R2') in Kuantan. The application stated that apart from the national curriculum, R2 would also teach the curriculum formulated by the United Chinese School Committees' Association of Malaysia ('Dong Zong') and that the students of R2 would sit for Dong Zong's school-leaving Unified Examination Certificate ('UEC'). The Director-General of Education approved R2's registration under ss 17–19 of the Education Act 1996 ('the EA') and beginning from 2016 R2 began conducting the UEC examination for its students annually. At least from 1995, the Government officially recognised that the 60 Chinese Private Secondary Schools ('CPSS') in the country — of which Chong Hwa KL was one — were eligible to conduct the UEC annual examination for its students. In late 2016, the appellants together with a fourth party filed an originating summons ('OS')

against the respondents questioning whether it was legal for R2's students to sit for the UEC examination when R2 was not one of the 60 CPSS and Dong Zong had not obtained prior approval from the Director of Examinations under s 69(1) of the EA to conduct the UEC examination. The appellants raised the questions on the basis that Dong Zong was not an educational institution as defined under s 2 of the EA, nor was it a body or syndicate established to manage and conduct examinations under s 68(e). The High Court dismissed the OS after finding that based on correspondence between the Education Ministry, Dong Zong and R2, the Education Ministry had given its tacit approval for Dong Zong/R2 to hold the UEC examination for R2's students and that no separate written approval was required to be obtained for that purpose under s 69(1) of the EA. In the instant appeal against the High Court's decision, the appellants argued that the correspondence between the relevant parties could not have the effect of overriding the mandatory requirements of s 69(1). The first respondent ('R1') submitted that s 69(1) of the EA had no application in the instant matter as Dong Zong fell under the exception to s 69(1), namely, s 69(4)(a). R1 submitted that since the Education Ministry had approved the establishment of R2 in 2012 to teach the national and Dong Zong curricula (which included the UEC examination), no separate application or approval was required for R2 to conduct the UEC examination. Furthermore, in 2014 and 2015, the respondents had kept the Director-General of Education informed that R2 would be holding its first UEC examination in October 2016 and the authorities had taken note of the matter without raising any objection. R2, on the other hand, submitted that the appellants were not students of R2 and were unaffected by whether the UEC examinations conducted by R2 were valid or not. R2 said that the appellants were busybodies who had no locus to file the OS which raised hypothetical and academic questions. The respondents also pointed out that in breach of the rules of natural justice the appellants did not make the students of R2 who had sat for the UEC examination, and whose interests were therefore directly affected by the OS, as parties to the proceedings.

Held, unanimously dismissing the appeal:

(1) Reading the EA, in applying to the Minister to establish an educational institution and in conducting examinations, there was no provision which mandated a separate application to the Director of Examinations. Chong Hwa KL, which was one of the 60 CPSS in the country, applied to establish R2 including to hold and conduct examinations under both the national and Dong Zong curricula. It did not make any separate application to hold examinations under both curricula. The fact that R2 was approved as a private educational institution under ss 16–19 of the EA and had held examinations under both curricula showed that approval to hold and conduct the examinations was implicit in the approval given to establish and register R2. This conclusion was

confirmed by the fact that R2 had conducted the PMR, SPM and STPM examinations under the national curriculum as well as the UEC examinations without a separate written approval of the Director of Examinations and no action was taken against R2 for holding those examinations (see para 34).

(2) The appellants were not students of R2 and their rights were not affected. Whether the 113 students of R2 who sat for the UEC examination in October 2016 had legally sat for that examination or not was none of their concern. That should have been the concern of the students affected but none of them made any complaint or filed any application like the OS. The appellants did not have a real interest in the questions posed in the OS and it appeared that not only were they busybodies, they were minors when the OS was filed and were being used as pawns in the struggle between two factions for control of Dong Zong. The courts could not be dragged into or be used for such purposes (see para 38).

(3) From the questions raised in the OS, if the appellants had any doubts, they should have written to the Director of Examinations or the Education Ministry or Education Department to seek clarification. Those parties would have been the best authorities to answer the questions posed. It was unnecessary for the court to answer them or to make the declaration sought. The court's power to make a declaratory judgment was confined to justiciable matters and limited to legal or equitable rights and did not extend to moral, social or political matters or matters of religious rituals (see paras 38 & 40).

(4) The OS application unduly affected all the students of R2 who had sat for the UEC examination, yet they were not made parties to the proceedings or given an opportunity to be heard. Justice required that they were given the right and opportunity to be heard and that no order should be made affecting them when they were not parties to the proceedings (see para 42).

(5) Based on the approved registration of R2 and the correspondence between not only the respondents and the Director-General of Education but also between the Director-General of Education/Director of Examinations and the Gabungan Lembaga Pengurus Sekolah Cina Pahang and the Malaysia Chinese Educated Students Association (both of whom had raised concerns about the legality of the students of R2 taking the UEC examinations) the Government's stand via the Director of Examinations, the Department of Education and the Ministry of Education was consistent, namely, that they had no objections to Dong Zong conducting the UEC examination for the students of R2 (see paras 30, 32 & 39).

(6) Section 77(1) of the EA allowed a private educational institution (such as R2) to conduct a course of study jointly in association with an organisation (such as Dong Zong) with the approval of the Minister. Section 69(4)(a) of the EA stated that s 69(1) shall not apply to a body or syndicate that was established to manage and conduct examinations under para 68(e). Paragraph 68(e) stated that the Minister may make regulations to provide for the conduct of examinations including the establishment of a body or syndicate to manage and conduct examinations. Although the term 'body' was not defined either under the EA or the Interpretation Acts 1948 and 1967, the dictionary meaning of that term included 'an organised group of people with a common function'. Dong Zong fell within that definition of 'body' in para 68(e). Dong Zong was set up, inter alia, to manage the curricula, examinations and teachers of the Chinese schools in the country. Based on the statement made in Parliament in 1995 (which was recorded in the *Hansard*) and since then, it was not disputed that students of the 60 CPSS in the country were eligible to sit for the annual UEC examination conducted by Dong Zong. Since then, the legality for all students of the 60 CPSS to sit the UEC examination and the legality for Dong Zong to conduct the said examination in those schools was no longer an issue. In passing the Education Act 1996 to replace the Education Act of 1961, s 151 was a saving provision which preserved the status of Dong Zong to conduct the UEC examination and of the students of the 60 CPSS to sit for that examination. Therefore, Dong Zong came within s 69(4)(a) of the EA (see paras 27–29 & 37).

(7) Section 69(1) of the EA should not be read in isolation. It was a cardinal rule of interpretation of statutes that the provisions of a statute must be read as a whole. The courts were not confined to undertake a literal interpretation of the words therein but were permitted to construe the purpose in the context and scheme of the relevant Act as a whole. In construing a statute, the court must not only look at the language of the statute but also consider the social conditions which gave rise to it and the mischief it was intended to remedy (see paras 26 & 29).

[Bahasa Malaysia summary

Pada 2010, sekolah menengah swasta Cina Chong Hwa Kuala Lumpur ('Chong Hwa KL') telah memohon kepada Menteri Pendidikan untuk kebenaran menubuhkan cawangannya (responden kedua atau 'R2') di Kuantan. Permohonan itu menyatakan selain daripada kurikulum kebangsaan, R2 juga akan mengajar kurikulum yang dirumuskan oleh Persatuan Jawatankuasa Sekolah Cina Bersatu Malaysia ('Dong Zong') dan bahawa para pelajar R2 akan menduduki Sijil Peperiksaan Bersatu sebelum meninggalkan sekolah Dong Zong ('UEC'). Ketua Pengarah Pendidikan telah meluluskan pendaftaran R2 di bawah ss 17–19 Akta Pendidikan 1996 ('AP') dan bermula

dari 2016 R2 telah mula menjalankan peperiksaan UEC untuk para pelajarnya setiap tahun. Sekurang-kurangnya dari 1995, Kerajaan secara rasmi mengiktiraf bahawa 60 Sekolah Menengah Swasta Cina ('CPSS') di negara ini — di mana Chong Hwa KL adalah salah satunya — layak untuk mengadakan peperiksaan tahunan UEC untuk para pelajarnya. Pada akhir 2016, perayu-perayu bersama-sama dengan pihak keempat telah memfailkan saman pemula ('OS') terhadap responden-responden dengan mempersoalkan sama ada ia adalah sah bagi pelajar R2 untuk menduduki peperiksaan UEC ketika R2 bukan salah satu dari 60 CPSS dan Dong Zong tidak mendapat kelulusan terlebih dahulu daripada Pengarah Peperiksaan di bawah s 69(1) AP untuk menjalankan peperiksaan UEC. Perayu-perayu telah menimbulkan persoalaan berasaskan bahawa Dong Zong bukan institusi pendidikan sepertimana ditafsirkan di bawah s 2 AP, juga ia bukan suatu badan atau sindiket yang ditubuhkan untuk mengurus dan menjalankan peperiksaan di bawah s 68(e). Mahkamah Tinggi telah menolak OS itu selepas mendapati bahawa berdasarkan surat-menyurat antara Kementerian Pendidikan, Dong Zong dan R2, Kementerian Pendidikan telah memberikan kelulusannya secara tersirat untuk Dong Zong mengadakan peperiksaan UECuntuk para pelajar R2 dan bahawa tiada kelulusan bertulis berasingan perlu diperoleh bagi tujuan tersebut di bawah s 68(1) AP. Dalam rayuan ini terhadap keputusan Mahkamah Tinggi, perayu berhujah bahawa surat-menyurat antara pihak-pihak berkaitan tidak boleh mempunyai kesan mengatasi keperluan mandatori s 69(1). Responden pertama ('R1') berhujah bahawa s 69(1) AP tidak terpakai dalam perkara ini kerana Dong Zong terjatuh di bawah pengecualian kepada s 69(1), iaitu, s 69(4)(a). R1 berhujah bahawa oleh kerana Kementerian Pendidikan telah meluluskan penubuhan R2 pada 2012 untuk mengajar kurikulum kebangsaan dan Dong Zong (yang termasuklah peperiksaan UEC), tiada permohonan atau kelulusan berasingan diperlukan untuk R2 menjalankan peperiksaan UEC itu. Tambahan pula, pada 2014 dan 2015, responden-responden telah memberitahu Ketua Pengarah Pendidikan bahawa R2 akan mengadakan peperiksaan UEC pertamanya pada Oktober 2016 dan pihak berkuasa telah mengambil perhatian tentang perkara itu tanpa menimbulkan apa-apa bantahan. R2, sebaliknya, telah berhujah bahawa perayu-perayu bukan pelajar R2 dan tidak terjejas sama ada peperiksaan UEC dijalankan oleh R2 adalah sah atau tidak. R2 mengatakkan bahawa perayu-perayu penyibuk yang tiada locus untuk memfailkan OS yang menimbulkan persoalan hipotetikal dan akademik. Responden-responden juga menunjukkan bahawa dalam pelanggaran rukun keadilan asasi perayu-perayu tidak menjadikan para pelajar R2 yang telah menduduki peperiksaan UEC, dan yang mana kepentingan mereka telah terjejas secara langsung akibat OS itu, sebagai pihak-pihak kepada prosiding.

Diputuskan, sebulat suara menolak rayuan:

(1) Melalui pembacaan AP tersebut, dengan memohon kepada Menteri

untuk menubuhkan institusi pendidikan dan menjalankan peperiksaan, tiada peruntukan yang memberi mandat suatu permohonan berasingan kepada Menteri Peperiksaan. Chong Hwa KL,yang merupakan salah sati daripada CPSS di negara ini, telah memohon untuk menubuhkan R2 termasuk mengadakan dan menjalankan peperiksaan di bawah kedua-dua kurikulum kebangsaan dan Dong Zong. Ia tidak membuat apa-apa permohonan berasingan untuk mengadakan peperiksaan di bawah kedua-dua kurikulum tersebut. Hakikat bahawa R2 telah diluluskan sebagai institusi pendidikan swasta di bawah ss 16–19 AP tersebut dan telah mengadakan peperiksaan di bawah kedua-dua kurikulum menunjukkan bahawa kelulusan untuk mengadakan dan menjalankan peperiksaan adalah terdirat dalam kelulusan yang telah diberikan untuk menubuh dan mendaftarkan R2. Kesimpulan ini telah disahkan dengan fakta bahawa R2 telah menjalankan peperiksaan PMR, SPM dan STPM di bawah kurikulum kebangsaan dan juga peperiksaan UEC tanpa kelulusan bertulis berasingan Pengarah Peperiksaan dan tiada tindakan telah diambil terhadap R2 kerana mengadakan peperiksaan tersebut (lihat perenggan 34).

(2) Perayu-perayu bukan pelajar R2 dan hak mereka tidak terjejas. Sama ada 113 pelajar R2 yang menduduki peperiksaan UEC pada Oktober 2016 telah dengan sah menduduki peperiksaan atau tidak bukan masalah mereka. Ia sepatutnya menjadi kebimbangan pelajar yang terjejas tetapi tiada antara mereka telah membuat aduan atau memfailkan apa-apa permohonan seperti OS. Perayu-perayu tidak mempunyai kepentingan sebenar dalam persoalan yang dikemukakan dalam OS dan ia kelihatan bahawa bukan sahaja mereka penyibuk, mereka adalah di bawah umur apabila OS tersebut difailkan dan digunakan sebagai umpan dalam pergelutan antara dua puak untuk mengawal Dong Zong. Mahkamah tidak boleh dilibatkan atau digunakan untuk tujuan tersebut (lihat perenggan 38).

(3) Berdasarkan persoalan yang ditimbulkan dalam OS tersebut, jika perayu-perayu mempunyai apa-apa keraguan, mereka sepatutnya telah menunlis kepada Pengarah Peperiksaan atau Kementerian Pendidikan atau Jabatan Pendidikan untuk mendapatkan pejelasan. Pihak-pihak tersebut adalah pihak berkuasa yang paling sesuai untuk menjawab persoalan yang dikemukakan. Ia tidak memerlukan mahkamah untuk menjawab mereka atau membuat deklarasi yang dipohon. Kuasa mahkamah untuk membuat penghakiman berbentuk deklarasi adalah terbatas kepada perkara yang boleh diadili dan terhad kepada hak yang sah atau saksama dan tidak meliputi perkara mengenai moral, sosial atau politik atau perkara mengenai ritual keagamaan (lihat perenggan 38 & 40).

(4) Permohonan OS tidaklangsung menjejaskan kesemua pelajar R2 yang

telah menduduki peperiksaan UEC, malah mereka tidak dijadikan pihak kepada prosiding atau diberikan peluang untuk didengar. Keadilan menghendaki agar mereka diberikan hak dan peluang untuk didengar dan bahawa tiada perintah patut dibuat yang menjejaskan mereka walhal mereka bukan pihak-pihak kepada prosiding (lihat perenggan 42).

(5) Berdasarkan pendaftaran yang diluluskan oleh R2 dan surat-menyurat antara bukan sahaja responden-responden dan Ketua Pengarah Pendidikan tetapi juga antara Ketua Pengarah Pendidikan/Pengarah Peperiksaan dan Gabungan Lembaga Pengurus Sekolah Cina Pahang dan Persatuan Pelajar Berpendidikan Cina Malaysia (kedua-dua yang telah menimbulkan kebimbangan tentang kesahan para pelajar R2 mengambil peperiksaan UEC) pendirian Kerajaan melalui Pengarah Peperiksaan, Jabatan Pendidikan dan Kementerian Pendidikan adalah konsisten, terutamanya, bahawa mereka tiada bantahan terhadap Dong Zong menjalankan peperiksaan UEC untuk para pelajar R2 (lihat perenggan 30, 32 & 39).

(6) Seksyen 77(1) AP terebut membenarkan institusi pendidikan swasta (seperti R2) untuk menjalankan kursus pengajian bersama persatuan dengan organisasi (seperti Dong Zong) dengan kelulusan Menteri. Seksyen 69(4)(a) AP tersebut menyatakan bahawa s 69(1) tidak patut memohon kepada suatu badan atau sindiket yang telah ditubuhkan untuk mengurus dan menjalankan peperiksaan di bawah perenggan 68(e). Perenggan 68(e) menyatakan bahawa Menteri boleh membuat peraturan untuk memperuntukkan bagi menjalankan peperiksaan termasuklah penubuhan suatu badan atau sindiket untuk mengurus dan menjalankan peperiksaan. Walaupun istilah 'body' tidak ditafsirkan sama ada di bawah AP tersebut atau Akta Tafsiran 1948 dan 1967, maksud kamus untuk istilah tersebut termasuklah 'an organised group of people with a common function'. Dong Zong terjatuh dalam tafsiran 'body' dalam perenggan 68(e). Dong Zong telah ditubuhkan, antara lain, untuk mengurus kurikulum, peperiksaan dan para guru sekolah-sekolah Cina dalam negara. Berdasarkan kenyataan yang dibuat di Parlimen pada 1995 (yang direkodkan dalam *Hansard*) dan sejak itu, ia tidak dipertikaikan bahawa para pelajar 60 CPSS di negara ini adalah layak untuk menduduki peperiksaan tahunan UEC yang dijalankan oleh Dong Zong. Sejak itu, kesahan kesemua pelajar 60 CPSS dan kesahan untuk Dong Zong menjalankan peperiksaan tersebut di sekolah-sekolah tersebut bukan lagi suatu isu. Dengan Akta Pendidikan 1996 yang diluluskan untuk menggantikan Akta Pendidikan 1961, s 151 adalah peruntukan pengecualian yang mengekalkan status Dong Zong untuk menjalankan peperiksaan UEC dan untuk para pelajar 60 CPSS menduduki peperiksaan tersebut. Oleh demikian, Dong Zong terjatuh di bawah s 68(4)(a) AP tersebut (lihat perenggan 27–29 & 37).

(7) Seksyen 69(1) AP tersebut tidak patut dibaca secara berasingan. Ia adalah rukun penting tafsiran statut bahawa peruntukan statut hendaklah dibaca secara menyeluruh. Mahkamah tidak terhad untuk membuat tafsiran harfiah perkataan-perkataan di dalamnya tetapi dibenarkan untuk mentafsir tujuan dalam konteks dan skima Akta berkaitan secara keseluruhan. Dalam mentafsir statut, mahkamah bukan sahaja perlu meihat kepada bahasa statut tetapu juga mengambil kira keadaan sosial yang menimbulkannya dan kesalahan yang dimaksudkan untuk diremedi (lihat perenggan 26 & 29).]

Cases referred to

Affin Bank Bhd v Mohd Kasim @ Kamal bin Ibrahim [2018] Supp MLJ 106; [2013] 1 CLJ 465, FC (refd)

Ang Game Hong & Anor v Tee Kim Tiam & Ors [2018] 4 MLJ 432, CA (refd)

Bar Malaysia v Index Continent Sdn Bhd [2016] 1 MLJ 445, FC (refd)

Fairise Odyssey (M) Sdn Bhd v Tenaga Nasional Bhd [2019] 2 MLJ 84, CA (refd)

Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor [2018] 2 MLJ 590, FC (refd)

Lim Cho Hock v Government of the State of Perak & Ors [1980] 2 MLJ 148 (refd)

Tan Kim Hock Product Centre Sdn Bhd & Anor v Tan Kim Hock Tong Seng Food Industry Sdn Bhd [2018] 2 MLJ 1, FC (refd)

Vijayarao a/l Sepermaniam v Suruhanjaya Perkhidmatan Awam Malaysia [2018] 12 MLJ 17, FC (refd)

Legislation referred to

Education Act 1961 (repealed by the Education Act 1996)

Education Act 1996 ss 2, 16(c), 17, 18, 19, 67, 68, 68(e), 69, 69(1), (4), (4)(a), 73(1), (2), 74, 77(1), 151

Interpretation Acts 1948 and 1967 s 3

Appeal from: Civil Suit No WA-24NCVC-1702–10 of 2016 (High Court, Kuala Lumpur)

Douglas Yee Wan-Li (Lim Pit Feng with him) (Douglas Yee) for the appellant.

Wong Kong Fatt (Lim Hoon Shi with him) (KF Wong & Lee) for the first respondent.

Ong Siew Wan (Toh Seng Soon with him) (Andrew-David Wong & Ong) for the second respondent.

Stephen Chung JCA (delivering judgment of the court):

THE APPEAL: BACKGROUND FACTS

[1] In 2010 SM Persendirian Chong Hwa Kuala Lumpur ('Chong Hwa Kuala Lumpur') applied to the Minister of Education to establish a branch in Kuantan to be known as Sekolah Menengah Chong Hwa Kuantan ('Chong Hwa Kuantan'). Its application stated that apart from teaching the national curriculum, it would also be teaching the 'Kurikulum Sekolah Menengah Persendirian Cina yang ditetapkan oleh Dong Zong' (United Chinese School Committees' Association of Malaysia) and for its students in Kuantan to sit for the Unified Examination Certificate ('UEC') examination conducted by Dong Zong.

[2] In July 2012 the Director-General of Education approved the registration of the school as such under ss 17–19 of the Education Act 1996 ('the Act'). Chong Hwa Kuantan conducted the first UEC examination for its students in October 2016. Since then it had conducted and continues to conduct the UEC examination every year.

[3] It is not in dispute that students of 60 Chinese Private Secondary Schools ('CPSS') in the country were eligible and allowed to sit the UEC annual examination conducted by Dong Zong. This status quo was confirmed in a statement made in Parliament (see *Hansard*: *Bil* 63, *Isnin*, 18 *Disember* 1995). Chong Hwa Kuala Lumpur is one of the 60 CPSS.

[4] In October 2016 the four plaintiffs filed an originating summons ('OS'), as amended, against the Government of Malaysia (Malaysian Ministry of Education) ('the first defendant'), the Chairman of the United Chinese School Committees' Association of Malaysia ('the second defendant/first respondent') and Chong Hwa Kuantan ('the third defendant/second respondent') contending that Chong Hwa Kuantan, being not one of the 60 CPSS, and Dong Zong in not obtaining any prior written approval from the Director of Examination under s 69(1) of the Act, could not conduct the UEC examination in the school for its students. The OS posed the following questions and for a declaratory order:

> 1(a) Whether it is legal for Dong Zong to allow the 113 students from Chong Hwa Secondary Kuantan (or any of its students) to participate in an examination known as the Unified Examination Certificate (UEC)?
>
> 1(b) Whether the 113 students from Chong Hwa Secondary School Kuantan (or any of its students) are eligible and legal to participate in an examination known as the Unified Examination Certificate (UEC)?
>
> 2 In the event that the answer and determination on the above paragraph (1)(a)

A and/or (b) is negative, whether the results of the UEC examination for the 113 students from Chong Hwa Secondary School Kuantan (or any of its students) are null and void?

3 In the event that the answer and determination on the above paragraph (1)(a) and (b) is negative, a declaration be given to recognize the legality of the UEC examination for all the students from 60 Chinese Private Secondary Schools and that the legality for Dong Zong to conduct UEC examination is not affected.

[5] The first defendant applied to strike out the OS application which was dismissed in the High Court. On appeal, the appeal was allowed and the OS against the first defendant was struck out.

[6] The main issue before the High Court was, whether the first respondent ('Dong Zong') was required to obtain the written approval of the Director of Examinations pursuant to s 69(1) of the Act to conduct the UEC and allowed the students of Chong Hwa Kuantan, not being one of the CPSS, to sit for the same?

[7] After hearing submissions of the parties, the learned judge did not grant the OS application in terms. The first, second and third plaintiffs ('the appellants') filed an appeal against the decision of the High Court whereas the fourth plaintiff did not appeal.

[8] In the midst of the appeal, the first respondent applied to strike out the appeal on the ground that the appellants lacked locus standi and could not maintain this appeal. The record showed that previously the first respondent made a similar application in the High Court which was dismissed. There was no appeal filed against that decision. After hearing submissions, we dismissed the motion to strike out the appeal and proceeded to hear the appeal on the merits.

[9] During the appeal, the second and third appellants, previously minors, claiming through their parents as litigation representatives, have attained the age of majority and adopted the action. They have applied and were granted leave to amend the title of the proceedings to reflect that fact.

THE APPELLANTS' SUBMISSION

[10] The appellants submitted that the first respondent as the 'person or educational institution' who wishes to 'conduct, permit or cause to be held or conducted, or be in any manner concerned in the holding or conducting of' the UEC for students of the second respondent must obtain the prior written approval from the Director of Examinations pursuant to s 69(1) of the Act which is mandatory.

[11] It was submitted that the first respondent did not obtain the prior written approval and not allowed to conduct the UEC for the students of the second respondent which is not one of the CPSS. **A**

[12] It was submitted that s 69(4) was not applicable to the first respondent which is not a body or syndicate established to manage and conduct examinations under s 68(e) of the Act nor conducting examinations for the purpose of assessing its own pupils. **B**

[13] The appellants submitted that the learned judge had erred in holding that the first respondent did not require the written approval of the Director of Examinations pursuant to s 69(1) based on the relevant correspondence that the Ministry of Education had given its tacit approval for students of the second respondent to take the UEC examination. It was submitted that the mandatory requirement could not be subsumed by the history of the CPSS, the setting of the second respondent and the correspondence from the Ministry of Education. **C** **D**

[14] It was submitted that the first respondent contravened s 69(1) of the Act when it conducted the UEC and allowed the students of the second respondent to sit for the same. **E**

THE FIRST RESPONDENT'S SUBMISSION

[15] It was submitted that the Director-General of Education Malaysia approved the registration of the school via a letter dated 26 July 2012 to teach both the national curriculum and the curriculum outside the national curriculum. It was submitted that this was confirmed in the certificate of registration issued by the Ministry and therefore no further or subsequent application or approval is required. **F** **G**

[16] The first respondent submitted that on 13 October 2014, it had informed the Director-General of Education of Malaysia that Chong Hwa Kuantan would take part in the UEC examination and by a reply dated 23 October 2014, it stated that it had taken note of the letter. **H**

[17] It was submitted that by a letter dated 13 February 2015, the school wrote to the Director-General of Education stating that the Prime Minister had announced that the students of Chong Hwa Kuantan were allowed to take the UEC examination and by a reply, dated 11 March 2015, stating that it had taken note of the letter. **I**

[18] It was submitted that it was clear that students of the school could and can sit for the UEC examination. It was submitted that the conduct of the

A UEC examination by Dong Zong and the taking of the UEC examination by the students of the school were lawful and in compliance with the approval given by the Ministry of Education. It was submitted that s 69(1) of the Act did not apply as approval had been given when the school was registered.

B **[19]** It was submitted that since then, the Ministry of Education, the Department of Education and or the Director of Examinations did not issue any show cause letter nor take any action against the respondents.

C **[20]** It was also submitted the UEC is an internal assessment conducted by Dong Zong within the provisions of s 69(4) of the Act and that the UEC certificate issued by Dong Zong is not recognised by the Ministry of Education as entry to public universities in the country. It was submitted that therefore the students of the school can sit the UEC examination without contravening the
D Act.

THE SECOND RESPONDENT'S SUBMISSION

[21] The second respondent adopted the submission of the first respondent
E and added that there was no dispute or quarrel between the appellants and the students of the second respondent.

[22] It was submitted that the appellants were students of other CPSS in the country whose rights to sit for the UEC examination have never been
F infringed, interfered or denied and did not suffer any loss or damages and that the 113 students of Chong Hwa Kuantan who sat the UEC examination were not sued as parties in the suit which is against the rule of natural justice and prejudicial to them.

G **[23]** It was submitted that it was not within the purview of the appellants to question whether it was legal for Dong Zong to allow the 113 students to participate in the UEC examination which is within the jurisdiction and power of the Ministry of Education and which cannot be enforced by the appellants.

H **[24]** It was submitted that the questions posed were hypothetical and academic and need not be answered by the court and no court will act in vain by granting meaningless declaration. It was submitted that the appeal be dismissed.

I OUR DECISION

[25] In this appeal the appellants submitted that Dong Zong is not a body or syndicate established to manage and conduct examinations under para 68(e) and that s 68(4) of the Act is not applicable to the first respondent. It was

submitted that the first respondent is not even an educational institution as defined in s 2 of the Act nor is it assessing its own pupils. It was submitted that s 69(1) is mandatory and it was obligatory for the first and second respondents to obtain the prior written approval of the Director of Examinations for Dong Zong to conduct the UEC examination at Chong Hwa Kuantan and raised the legality of the 113 students of the school to sit the UEC examination in October 2016.

[26] It is a cardinal rule of interpretation of statutes that the provisions must be read as a whole: see *Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor* [2018] 2 MLJ 590. Section 69(1) should not be read in isolation. The courts are not confined to undertake a literal interpretation of the words therein but are permitted to construe the purpose in the context and scheme of the relevant Act as a whole: see *Bar Malaysia v Index Continent Sdn Bhd* [2016] 1 MLJ 445. Section 73(1) states that nothing in this Act shall be construed as prohibiting the establishment and maintenance of a private educational institution, which is specifically provided for in s 16(c). Under sub-s 73(2), every private educational institution shall comply with this Act and all regulations made under this Act and applicable to the educational institution. Under s 74, a private educational institution shall comply with the requirements of the national curriculum and shall prepare pupils for prescribed examinations. These requirements are set out in ss 17, 18, 19, 67, 68 and 69 of the Act.

[27] We now refer to s 77(1) which states that no private educational institution registered under this Act shall conduct any course of study or training programme jointly, in association, affiliation or collaboration or otherwise, with a university or institution of higher education or other educational institution or organisation within or outside Malaysia, except with the approval in writing of the Minister. This means that a private educational institution may conduct a course of study jointly in association with an organisation with the approval of the Minister. Chong Hwa Kuala Lumpur applied to the Minister to establish a branch in Kuantan. The application was approved and Chong Hwa Kuantan was registered as a private educational institution. Dong Zong is an organization registered in Malaysia. The school had applied to conduct both the national curriculum and the curriculum conducted by Dong Zong including the UEC examination. As stated, the appellants had raised the legality of Dong Zong in conducting the UEC examination at the school pursuant to s 69(1) of the Act whereas the respondents submitted that sub-s 69(4) applied, which is an exception to s 69(1).

[28] Pursuant to s 69(1), subject to sub-s (4), no person or educational institution shall conduct, permit or cause to be held or conducted, or be in any

manner concerned in the holding or conducting of, any examination for any pupil of an educational institution or for any private candidate without the prior written approval of the Director of Examinations. Subsection (4) states that sub-s (1) shall not apply to: (a) a body or syndicate established to manage and conduct examinations under para 68(e); (b) the Malaysian Examinations Council established under the Malaysian Examinations Council Act 1980 [Act 225]; and (c) an educational institution which conducts its own examination, test or other forms of assessment for the purpose of assessing its own pupils. Paragraphs (b) and (c) are not applicable to this case. Paragraph 68(e) states that the Minister may make regulations to provide for the conduct of examinations including the establishment of a body or syndicate to manage and conduct examinations.

[29] Although Dong Zong is not registered as an educational institution, it comes within the definition of 'person' in s 3 of the Interpretation Acts 1948 and 1967. There is no definition for the word 'body' in the Interpretation Acts nor in this Act. The *Concise Oxford English Dictionary* defines 'body' to mean 'an organized group of people with a common function'. Dong Zong comes within the definition of 'a body' in para 68(e). In construing the statute, the court must not only look at the language of the statute, but also from a consideration of the social conditions which gave rise to it, and that of the mischief which it was passed to remedy: see *Tan Kim Hock Product Centre Sdn Bhd & Anor v Tan Kim Hock Tong Seng Food Industry Sdn Bhd* [2018] 2 MLJ 1. Dong Zong was set up, among others, to manage the curricula, examinations and teachers of the Chinese schools in the country. In the statement made in Parliament in 1995, the 60 CPSS in the country were eligible and allowed to sit the annual UEC examination conducted by Dong Zong. This fact is not in dispute. In passing the Education Act 1996 to replace the Education Act 1961, s 151 is a saving provision which preserves the status of Dong Zong to conduct the UEC examination and of the 60 CPSS to sit the UEC examination under the Act. Therefore Dong Zong comes within s 69(4)(a) of the Act.

[30] Notwithstanding the statement made in Parliament, after Chong Hwa Kuala Lumpur applied to establish a branch in Kuantan to conduct the UEC examination in Kuantan, there were concerns raised on the legality of the UEC examination conducted by Dong Zong for the students of Chong Hwa Kuantan. In his judgment, the learned judge had referred to the letter dated 1 September 2014 from Gabungan Lembaga Pengurus Sekolah Cina Pahang ('gabungan') which raised this issue. By a letter dated 10 September 2014, initially the Pengarah Pendidikan Pahang replied that the school was not allowed to participate in the UEC examination. By a subsequent letter dated 18 September 2014, it withdrew the earlier letter. This was followed by a letter of same date, namely 18 September 2014, from Ketua Pengarah Pelajaran Malaysia stating that the school is registered as a private educational institution

(*institusi pendidikan swasta*) approved to run both the 'Kurikulum Kebangsaan' and 'di luar Kurikulum Kebangsaan'. A

[31] In October 2014, Dong Zong wrote to the Ketua Pengarah Pelajaran Malaysia that the students of Chong Hwa Kuantan would be sitting the UEC examination. In February and October of 2015, Chong Hwa Kuantan informed the Ketua Pengarah Pelajaran Malaysia that its students would be sitting in the UEC examination in 2016. In October 2015, Dong Zong and the United Chinese School Teachers' Associations of Malaysia ('Jiao Zong') held a conference attended by representatives from the Chinese communities where it was agreed that the students of Chong Hwa Kuantan are eligible and allowed to sit the UEC examination conducted by Dong Zong. There was no complaint made or any action filed to challenge this decision. B C

[32] The next series of letter was a letter dated 2 September 2016 from the Malaysia Chinese Educated Students Association ('association') to the Director of Examinations Board raising concerns on the legality of the students of Chong Hwa Kuantan taking the UEC examination. By a letter dated 8 September 2016, the Director of Examinations replied to the association stating that the students of the school were not permitted to take the UEC examination. However, by a letter dated 2 October 2016, the Director of Examination withdrew the earlier letter dated 8 September 2016. D E

Clearly the Director of Examinations had agreed to the UEC examination to be conducted by Dong Zong for the students of Chong Hwa Kuantan in October 2016. F

[33] To reiterate, in September 2010, Chong Hwa Kuala Lumpur, being one of the 60 CPSS, applied to the Minister of Education to establish a branch in Kuantan to be known as Chong Hwa Kuantan because there was no 'sekolah menengah persendirian Cina' ('SMPC') in Pahang after eight SMPC converted to 'sekolah menegah jenis kebangsaan' ('SMJK'). In its application, it stated that its branch would conduct both the national curriculum and curriculum outside the national curriculum, namely the curriculum conducted by Dong Zong offering the UEC examination, including holding the examinations under both curricula. G H

[34] Reading the Act, in applying to the Minister to establish an educational institution and in conducting the examinations, there is no provision in the Act which mandates a separate application to the Director of Examinations. In this case Chong Hwa Kuala Lumpur made one application to establish its branch in Kuantan known as Chong Hwa Kuantan including to hold and conduct the examinations under both curricula. It did not make any separate applications to hold examinations under the national curriculum and or the curriculum I

A conducted by Dong Zong. The fact that Chong Hwa Kuantan was approved as such as a private educational institution under ss 16–19 of the Act and have held both examinations, the approval to hold and conduct the examinations was implicit in the approval given to establish and register the school. The fact that the school was allowed to hold the examinations such as PMR, SPM and
B STPM under the national curriculum without a separate written approval of the Director of Examinations required and no action was taken against the school for holding these examinations, and the UEC examinations, confirmed our conclusion as such: see *Fairise Odyssey (M) Sdn Bhd v Tenaga Nasional Bhd* [2019] 2 MLJ 84.
C

[35] Further, we refer to the prayers in the OS application. The appellants did not assert that it was illegal for Dong Zong to allow the 113 students from Chong Hwa Kuantan to participate in the UEC examination or that the UEC
D examination conducted by Dong Zong for the 113 students of Chong Hwa Kuantan was illegal, null and void or that it was unlawful for the 113 students to participate in the UEC examination conducted in October 2016 nor any consequential relief thereto. If they did, these might be justiciable.

E **[36]** Instead the appellants posed the questions: (a) whether it was legal for Dong Zong to allow the 113 students to participate in the UEC examination; and (b) whether the 113 students were entitled and legal to participate in the UEC examination? The appellants then posed the next question that in the event that the answer and determination to the first two questions are negative,
F whether the results of the UEC examination for the 113 students from Chong Hwa Kuantan were null and void. In prayer 3, they sought, that in the event the answer and determination to the first two questions are negative, for a declaration be given to recognise the legality of the UEC examination for all the students from the 60 CPSS and that the legality for the Dong Zong to conduct
G the UEC examination (for the 60 CPSS) is not affected.

[37] The appellants contended that due to the uncertainties, they have an interest for a determination as to the legality of the UEC examination for all the students of the 60 CPSS including themselves and the legality of Dong Zong to
H conduct the UEC examination for them. It is not in dispute that the appellants and the fourth plaintiff are not students of Chong Hwa Kuantan but students of some of the 60 CPSS. Based on the government statement, recorded in the *Hansard* in 1995, since that date there is no dispute that students of the 60 CPSS are entitled and eligible to sit for the UEC examination conducted by
I Dong Zong. They did not assert that being students of one of the 60 CPSS that they were not allowed or denied from sitting the UEC examination conducted by Dong Zong or that their right as such had been restricted, denied or taken away. Since then the legality for all the students of the 60 CPSS to sit the UEC examination and the legality for Dong Zong to conduct the UEC examination

in the 60 CPSS are no longer in issue. In fact the appellants have sat the junior UEC examination. Reading the OS application, prayer 3 has become academic and is redundant.

[38] The appellants being not students of Chong Hwa Kuantan, their rights have not been affected. Whether the 113 students of the school were legally allowed to sit for the UEC examination is none of their concern. This should be the concerns of the 113 students and yet none of them has made any complaint or such application. We were of the view that the appellants did not have a real interest in the questions posed: see *Affin Bank Bhd v Mohd Kasim @ Kamal bin Ibrahim* [2018] Supp MLJ 106; [2013] 1 CLJ 465. It has been held that the power to make declaratory judgment is confined to matters justiciable in the court and the binding declaration which it can make is limited to legal or equitable rights and do not extend to moral, social or political matters nor matters of religious rituals: see *Lim Cho Hock v Government of the State of Perak & Ors* [1980] 2 MLJ 148. Based on the history of Dong Zong, which the learned Judge had referred to in his judgment, it appears that not only the appellants are busybodies in the OS application, the appellants, being minors at the time, are being used as pawns in the struggle between two factions for control of Dong Zong. The courts should not be dragged into or be used for this purpose. Therefore we came to the view that it was not necessary to answer the questions posed or to make the declaration sought.

[39] Based on the approved registration of the school and the above series of letters, the stand of the government, via the Director of Examinations, the Department of Education and the Ministry of Education, was consistent namely that they did not have any objection to Dong Zong conducting the UEC examination for the students of Chong Hwa Kuantan. Both the *gabungan* and the association, which had raised the concerns, did not file any application nor challenged the legality of the UEC examination conducted by Dong Zong for the students of Chong Hwa Kuantan.

[40] The concerns raised by the *gabungan* and the association about the legality of Dong Zong conducting the UEC examination at Chong Hwa Kuantan were of great interests to the Chinese communities in the country, including the different factions, and those behind the appellants. Notwithstanding the consistent stand of the government as stated above, shortly, after the letter dated 2 October 2016 by the Director of Examinations, the appellants filed the OS application. If there were any doubts, the appellants should have written to the Director of Examinations or the Department of Education or Ministry of Education to seek clarification before filing the OS application. They would have been the best authorities to answer the questions posed instead of filing the OS application. It appeared to be another attempt to derail the holding of the UEC examination at Chong Hwa Kuantan and a

A continuing saga of factions fighting which should be put to a stop.

[41] At the material times, as far back in 2012, the appellants did not file any application or injunction to restrain Dong Zong, Jiao Zong, Chong Hwa Kuala Lumpur or Chong Hwa Kuantan from holding the UEC examination at
B Chong Hwa Kuantan. Similarly, in the OS filed in October 2016, the appellants did not pray for an injunction to restrain the holding of the UEC examination at Chong Hwa Kuantan which was held in October 2016. No explanation was given for the delay.

C **[42]** The 113 students of the school had sat the UEC examination in 2016. Since then, the UEC examination has been held every year at the school and a few hundred students had sat the UEC examination at the school. The OS application will unduly affect all of them but they were not made parties to the OS and not given the opportunity to be heard. Justice requires that they must
D be afforded the right and opportunity to be heard. Justice also requires that no order shall be made or shall unduly affect them when they are not parties to the proceedings and not afforded the opportunity to be heard: see *Ang Game Hong & Anor v Tee Kim Tiam & Ors* [2018] 4 MLJ 432; *Vijayarao a/l Sepermaniam v Suruhanjaya Perkhidmatan Awam Malaysia* [2018] 12 MLJ 17.

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[43] At the end of the appeal, we found that the learned judge was not plainly wrong and that there were no merits in the appeal. Therefore the appeal was dismissed with costs.

F *Appeal unanimously dismissed.*

Reported by Ashok Kumar

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